

July 9, 1998

**Advisory Opinion 1998 - No. 5**  
**Hosting as a gift**

The following advisory opinion request is submitted on the Board's own motion.

**QUESTION**

Is it a violation of the State Ethics Act for a legislator or legislative staff person to accept or solicit contributions from lobbyists for legislative "events," such as member and/or staff meetings or retreats; end of session "appreciation" events; and member gifts on the occasion of a first floor speech?

**OPINION**

It is a violation of the ethics law to solicit gifts of the type stated in this question from lobbyists or lobbyist-employers. If such gifts are wholly unsolicited, the statutory gift limits determine whether acceptance is a violation.

**ANALYSIS**

A. SOLICITATION OF GIFTS

In its prior opinions dealing with solicitation, the Board has applied two provisions to determine whether such conduct would violate the ethics law: the "special privileges" statute and the "reasonable expectation" rule. The full text of these statutes is:

*RCW 42.52.070 Special privileges.* Except as required to perform duties within the scope of employment, no state officer or state employee may use his or her position to secure special privileges or exemptions for himself or herself, or his or her spouse, child, parents, or other persons.

*RCW 42.52.140 Gifts.* No state officer or state employee may receive, accept, take, seek, or solicit, directly or indirectly, any thing of economic value as a gift, gratuity, or favor from a person if it could be reasonably expected that the gift, gratuity, or favor would influence the vote, action, or judgment of the officer or employee, or be considered as part of a reward for action or inaction.

The Board interpreted the "special privileges" statute to apply to solicitation of travel expenses in **Advisory Opinion 1995 - No. 17, legislator letters**. One of the questions asked was whether a legislator could send a letter to individuals or organizations soliciting contributions to a fund held by a nonprofit organization for payment of travel expenses and registration fees of legislators to enable them to attend an educational conference. The opinion stated that such a letter would be a violation of the ethics law:

We find that this solicitation would not fall within legislative duty and, therefore, would be prohibited by the State Ethics Act's prohibition against legislators using their positions "to secure special privileges" for themselves or others.

The Board has also interpreted the "reasonable expectation" statute to apply to such situations, in **Advisory Opinion 1996 - No. 1, travel payments/third parties**. Asked whether a solicitation for travel expenses to attend an educational conference would be appropriate if it did not involve the use of state resources, the Board responded that if a third-party lobbyist is providing the contribution, there would be a violation of the "reasonable expectation" statute (RCW 42.52.140):

We interpret the provision as barring legislators, under the circumstances specified in the question, from soliciting or accepting contributions from lobbyists registered under the Public Disclosure Act or from persons or entities that employ or retain such registered lobbyists.

In this request, legislators or legislative staff would be soliciting contributions for food and beverage for staff and/or member gatherings. By soliciting such assistance from those who have a direct interest in legislative action, there would be a use of official position to obtain "special privileges" in violation of the statute.

Further, such solicitation creates a clear impression of a relationship with mutual obligations which is in violation of the "reasonable expectation" statute. Although it is highly unlikely that any member would in fact be influenced in "vote, action, or judgment" in such circumstances, there is definitely an appearance of reasonable expectation to the outside observer. Further, from the standpoint of the person being solicited, there could be a concern that refusal to participate could have negative consequences in terms of access and good will.

The Board notes that the solicitation circumstances in this opinion request are substantially different than the situation where a lobbyist or lobbyist-employer advertises an educational conference or association meeting. In such cases, where the lobbyist or lobbyist-employer is the primary sponsor of the event, there is no violation caused by an inquiry as to whether a discount or waiver of the attendance fee is available to government officers and employees.

## B. ACCEPTANCE

When the reasonable expectation statute is applicable, the statute prohibits acceptance as well as solicitation. The Board has used that analysis in all of its third-party lobbyist opinions, beginning with **Advisory Opinion 1996 - No. 1**, quoted previously. The factors for this analysis were set forth in **Advisory Opinion 1995 - No. 5, complimentary newspaper subscription**. After determining that the gift of a newspaper subscription would fit one of the exceptions to the fifty dollar limit, the Board's opinion stated the following test for the application of the reasonable expectation rule:

Some factors that the Board considers relevant here include whether there is a lobbying relationship between the donor and the legislator; the value of the subscription; and if the subscription cost would be paid by a lobbyist, whether the legislator has other reasonable means of obtaining the newspaper. See: House Advisory Opinion 1989 - No. 2, where the former House Board of Legislative Ethics considered factors of this nature in disallowing an expensive gift of travel expenses where the travel dealt with a public policy matter and was within legislative duties but where the expenses would have been paid by persons with a lobbying purpose.

In this case the contributions are coming from third-party lobbyists or lobbyist-employers, but the

value may or may not be significant. In other opinions where the Board has applied the reasonable expectation rule to prohibit acceptance, the value was above the fifty dollar gift threshold stated in RCW 42.52.150:

(1) No state officer or state employee may accept gifts, other than those specified in subsections (2) and (5) of this section, with an aggregate value in excess of fifty dollars from a single source in a calendar year or a single gift from multiple sources with a value in excess of fifty dollars. For purposes of this section, "single source" means any person, as defined in RCW 42.52.010, whether acting directly or through any agent or other intermediary, and "single gift" includes any event, item, or group of items used in conjunction with each other or any trip including transportation, lodging, and attendant costs, not excluded from the definition of gift under RCW 42.52.010. The value of gifts given to an officer's or employee's family member or guest shall be attributed to the official or employee for the purpose of determining whether the limit has been exceeded, unless an independent business, family, or social relationship exists between the donor and the family member or guest.

If the contributions described in this opinion request are wholly unsolicited, it is appropriate to apply the gift analysis. Solicitation implies a demand for special privileges and a reasonable expectation of influence. If the gift described in this request is unsolicited, it does not raise a reasonable expectation question unless the gift is being offered to influence or reward specific action.

In applying the gift analysis, the first question is whether either of the food and beverage exemptions apply. Unsolicited food and beverages in the form of hosted receptions and meals related to official duties are exempted from the fifty dollar gift limit by RCW 42.52.150(2)(f) and (5). In order to come under that provision, however, the event has to include participation by the lobbyist-host. If a meal is involved, there must be direct contact and discussion of legislative business, as stated by the Board in **Advisory Opinion 1996 - No. 15, Restaurant Association Event**.

The circumstances described in this request suggest that the lobbyists are expected to be absentee sponsors, which would not meet the test for the exception. Therefore the fifty dollar per person limit applies.

There is also a question about the calculation of the fifty dollar limit in cases where there are multiple staff and/or member recipients. When the gift is directly to multiple recipients, it is appropriate to divide the total accordingly. If advance purchases are required, the number of confirmed reservations may be used rather than actual attendance.

However, if the gift is to a single person, who then plans to give it to others, the full amount is attributable to the initial recipient. Thus if a member is going to provide first-speech presents to other members, no more than fifty dollars worth of those gifts could come from contributed sources.